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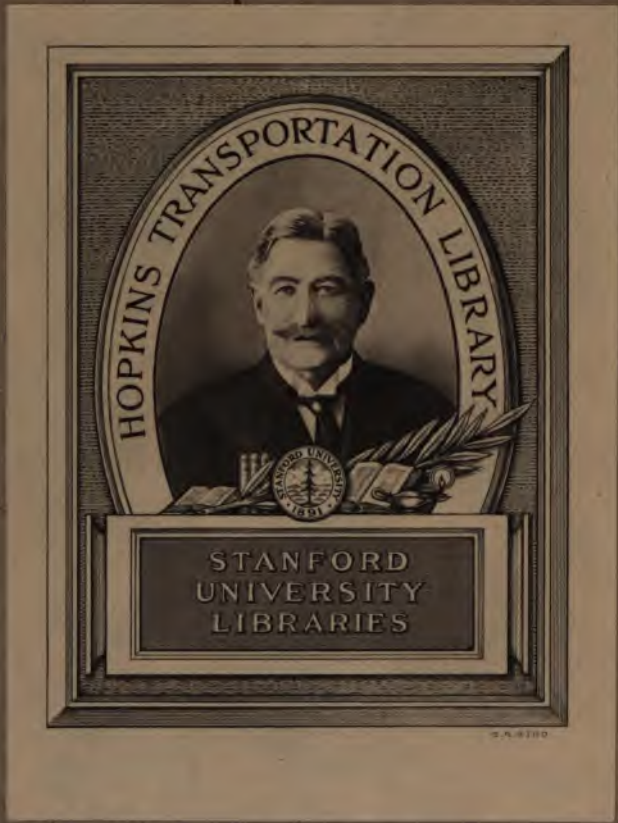
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**RAILROAD REGULATION
IN WISCONSIN**

LETTER ADDRESSED TO
JOSEPH NIMMO, Jr.
STATISTICIAN AND ECONOMIST

BY

Hon. W. H. HATTEN
CHAIRMAN OF SENATE RAILROAD COMMITTEE
OF THE STATE OF WISCONSIN

AND

Mr. NIMMO'S REPLY

TANFORD CLARK

MARCH 11, 1900

WISCONSIN LEGISLATURE.

SENATE CHAMBER.

MADISON, February 3, 1905.

MR. JOSEPH NIMMO, JR.,
Huntington, Long Island,
New York.

MY DEAR SIR:

As Wisconsin has under consideration the question of the establishment of a Board of Railway Commissioners, I take the liberty of addressing you to ask your views on the question of State regulation of railways. I shall prize very highly, and treat as confidential if you so desire, any suggestions that you may make that will aid us in framing a law for Wisconsin.

Thanking you in advance, I am,

Respectfully yours,

W. H. HATTEN,

Chairman Senate Railroad Committee.

MR. NIMMO'S REPLY.

WASHINGTON, D. C., March 10, 1905.

HON. W. H. HATTEN,

Chairman of Senate Railroad Committee,
Legislature of Wisconsin.

DEAR SIR:

In your letter of February 3, you ask my "views on the question of State regulation of railways," with special reference to the question of the establishment of a board of railway commissioners.

A proper answer to that question having regard to the vital interests at stake and the intimate interdependence of State and National commercial interests involves the necessity of considering governmental regulation in this country generally. In the present instance the importance of this mode of treatment is accentuated by the fact that the great trunk lines of Wisconsin traverse several States and are extensively engaged in interstate commerce.

A POPULAR MISAPPREHENSION IN REGARD
TO THE NATURE AND EFFECTS OF RAIL-
ROAD REGULATIONS NOW IN FORCE.

The impression prevails and is being assiduously cultivated by persons interested in the advocacy of the expedient of governmental rate-making that a sort of *laissez faire* policy has been and is still being pursued toward the railroads of the United States—in other words, that the railroads are to a great extent a law unto themselves. Nothing could be more erroneous. The very reverse is true.

There is no business in this country which is more completely the subject of legal restraint than is that of railroad transportation. The railroads are regulated by the Na-

tional Government, by States, by cities, counties, towns, village boards of trustees, school districts, and by almost every other political subdivision of the State. The law of the common carrier and of the public highway and the decisions of the courts embrace volumes of regulation applicable to the conduct of railroad transportation, while the Act to Regulate Commerce as amended, amplifies, extends and particularizes the regulative principles of the common law in its application to the railroads. It has been asserted by an eminent lawyer that the railroad is held to a more rigid responsibility in the courts than any other litigant. The judicial records of the country afford conclusive evidence of the correctness of this assertion. The published reports of the Government constitute abundant proof of the fact that the American Railroad System is a thoroughly and admirably regulated system of transportation.

Besides the railroads of the country—State and National—are regulated by a controlling environment of competitive commercial and industrial forces and by an all-pervading and effective system of self-government instituted by the necessities of the interaction of the lines of different companies and by the compulsion of their common necessities. This grand scheme of self-government is also supplemented by strenuous and effective State and National regulations. A proper appreciation of the force and scope of this vitally important fact seems to justify a brief notice of

THE EVOLUTION OF THE AMERICAN RAILROAD SYSTEM.

From the year 1830 to about the year 1860 the railroads of the United States were, as a rule, disassociated. Each line pursued its own traffic policy, prescribed its own classi-

fication and rate sheets, avoided joint traffic arrangements with the lines of other companies and stoutly resisted the common use of cars and tracks. Different track gauges were adopted by the different companies in order to subserve the commercial interest of their several termini and in order to avoid entangling alliances with other companies. But in the course of time the country outgrew this restricted mode of railroad transportation. A general demand arose for a larger and more comprehensive policy. During the Civil War, 1861 to 1865, the Government of the United States required the continuity of railroad transportation for the movement of troops and munitions of war. Soon thereafter the commercial interests demanded a larger and less restricted method of conducting the internal commerce of the country by rail. There also arose a general and imperious demand for uninterrupted postal communications and for improved facilities for travel. It was impossible for the railroad companies to resist these demands for a unified system of railroad facilities. Accordingly they acceded to and have steadily observed the requirement of the Act of June 15, 1866, which reads as follows:

“That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges and ferries all passengers, troops, Government supplies, mails, freight and property on their way from one State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination.”

R. S. Sec. 5258.

This Act has been denominated “The Charter of the American Railroad System.” Its broad and general terms would

seem to justify the title of "Constitution of the American Railroad System." It is suggestive, enabling and protective. It invites to combination, to expansion, and to larger possibilities, with no suggestion whatever of governmental restraint. It is incomparably the most important law of the United States in the nature of railroad regulation.

In the course of twenty-five years a common track gauge was adopted; tracks were united; joint traffic over connecting lines was generally established and the railroads of the country, while sharply competing, became in fact partners in the grandest system of transportation that the world ever saw. This unification of interests constituted, however, a partnership not as between friends, or persons engaged in voluntary co-operative enterprise, but as between corporations, forced into partnership relations. In many instances the community of interests was between strenuous rivals, enemies engaged in a life or death struggle for ascendancy. The physical unity of the different lines was readily accomplished and it exists to-day as an almost perfect system, but the unification of the traffic interests of the different companies has presented exceedingly difficult problems. The juncture of coterminous lines begat an intense and all-pervading competition between rival lines, rival trade centers and rival sections of the country. Rates frequently fell below the actual cost of transportation, many roads became insolvent and bankruptcy stared all the leading companies in the face. The public, and particularly the great commercial centres of the country, also suffered greatly from this condition of demoralization. Hence there arose an imperative public demand that these struggles should

cease, and that published rates, free from unjust discrimination, should be maintained. Railroad interests also pointed in the same direction.

The railroad companies devised various expedients for the accomplishment of this laudable purpose. To a great extent the troubles were allayed by means of associations in the nature of self-government, conceived in the spirit of compromise, and based upon enlightened views of self-interest. But in time it became evident that these agreements, embracing the publicity of rates, the maintenance of agreed rates, the avoidance of unjust discriminations, the prohibition of secret rates to favored shippers and to favored industries and localities, needed the sanction of statute law to make them effective. In a word it was seen that the principles of the common law must be so developed as to embrace the decrees of the lessons of experience inculcated in the conduct of railroad transportation. That was accomplished by the beneficent Act to Regulate Commerce, approved February 4, 1887, which legalized and made effective the regulative measures previously and since adopted by the railroad companies. The amendments of the Act to Regulate Commerce having reference particularly to the so-called Elkins' Act, approved February 19, 1903, have also operated strongly in the same direction. These Acts of Congress are based upon the time-honored principles of the common law and are thoroughly loyal to the principle of regulation under the judicial authority of the Government. At the same time they repel any expression in favor of the effete despotic rule of bureaucratic control.

That the great problem of railroad transportation has been substantially and beneficially solved in this country by

the hard lessons of experience, and by the splendid results of railroad self-government reinforced and supplemented by the provisions of statutory enactment is clearly demonstrated in the experiences of the Interstate Commerce Commission. This is shown as follows:

During the eighteen years of the existence of the Commission:

1. Not a single case of exorbitant rates has been proved in the Federal courts.

2. Only one case of unjust discrimination has been proved in the courts during each two and a half years, out of millions of freight transactions annually.

3. Ninety-two per cent of all the complaints made to the Commission have been settled by it without even a formal hearing, and determination, the cases thus disposed of involving complaints as to exorbitant rates, unjustly discriminating rates, rebates, and almost every other conceivable evil.

4. Under the operation of the Elkins Law rebates like exorbitant rates, in the language of Commissioner Knapp, "*have become practically an obsolete question.*"

5. The average rate per ton per mile for transportation on railroads fell from 1.24 cents in 1882 to .78 cents in 1903, which involved a saving of nearly \$788,000,000 annually to the country in freight charges on the basis of the traffic of 1903.

6. During the last twenty years the American Railroad System has been enormously expanded and its efficiency has been greatly increased, while the commercial and industrial interests of the country have exhibited a phenomenal development.

These are the splendid results of the grandest and most beneficent system of transportation the world ever saw, in the foremost nation of the globe, under an exceedingly mild form of regulation.

The causes of complaint which remain to be adjusted include private car abuses, and other irregularities which are but the frictional resistances and incidental evils of a great system of transportation. Evils can never, of course, be entirely eliminated from the conduct of human affairs, especially in a country where conditions are subject to change as the result of developments which constantly follow in the footsteps of aggressive enterprise.

Far greater difficulties than those now complained of have been overcome by means of expedients adopted by the railroad companies and by enactments of Congress conformable to the principles of the common law and without recourse to any autocratic rule of bureaucratic government—a relic of the dead past of political history.

The only question of importance which remains to disturb the commercial and industrial interests of the country is that of relative rates, to different localities, States and sections of the country. This involves an exceedingly delicate political question for the State or National legislator—the question of commercial liberty.

COMMERCIAL LIBERTY.

We must not lose sight of the fact that commercial liberty ever has been and always will be the liberty of competitive struggle, with all the severe results which such struggles entail and that governmental regulation conservative of the ends of liberty must not attempt to eliminate that struggle, but only hold it within the restraints of justice and equity.

Competitive struggle always involves the success of one contestant and the failure of another. In concrete cases it involves the success of one town or city and the failure of another, the success of one business enterprise and the failure of another—sometimes the prosperity of one side of the street and the decadence of the other. It is beyond the reach of beneficent governmental interference, without trenching upon personal liberty. It is impossible to have the freedom of competition, with all the benefits and inspirations to progress which it affords without the discriminations and difficulties which result from its operations.

In the course of the centuries the judicial mind has wrought out the doctrine of *intrinsic reasonableness* for the purpose of differentiating between just and unjust discrimination, reasonable and unreasonable restraints. This doctrine of the law had its origin in the characteristics and infirmities of human nature and not in the changing conditions of advancing civilization. As such it is a problem solved not for a day but for all time. Our highest ideals of beneficent government are based upon this doctrine. It is the underlying principle of liberty which dominates the political life of this Nation. The maintenance of commercial liberty has been a problem of the ages solved by the lessons of experience and not by any populistic, socialistic, or academic experiment. It is the animating purpose of the common law to enforce the principles of commercial liberty. During the last four hundred years the English-speaking people have had implicit faith in the principles and provisions of the common law, as developed, and that confidence knows no abatement. It is the very soul of commercial liberty.

In Great Britain the only governmental restraints upon the freedom of competition recognized under the principles of the common law are restraints upon practices which are recognized as involving conspiracy, dishonesty, intimidation, molestation, or other clearly recognized wrongs. There the possibilities of beneficent governmental interference stop. It has been the aim of the jurists of Great Britain and of the United States to conform the rules and administration of the common law to the exigencies of commercial experiences and of recognized commercial principles. The observance of the lessons of such experiences is of the very essence of commercial liberty. The common law is the secret of England's greatness.

The idea that the Government of the United States or of any State shall ever become responsible for the course of the development of the commercial and industrial interests of this country or of any part thereof, was not entertained by the men who framed the Constitution of the United States, and I believe that upon due reflection any such scheme will be spurned by the present and coming generations, as an invasion of the principles of commercial liberty. This policy of non-interference with legitimate commercial struggle defines American liberty. It marks the parting of the ways between Americanism and autocracy. Thomas Jefferson was the most distinguished advocate of this principle. In his first inaugural address, March 4, 1801, he recommended "government which shall restrain men from injuring one another and leave them otherwise free to regulate their own pursuits of industry and improvement." And in his first message to Congress, December, 1801, he declared that "Agriculture, manufactures, commerce, and

navigation, the four pillars of our prosperity, are the most thriving when left most free to individual enterprise."

It is a sad indication of the political degeneracy of the times when men depart from the principles of true Americanism thus proclaimed, and that even those who adore the name of Jefferson seem to be ambitious to lead in the common defection from his cherished political convictions.

Commercial liberty is a subject too broad and too subtle for any further attempt at elucidation in this connection.

WISCONSIN'S ABSOLUTE AND RELATIVE PROGRESS.

In view of the fact that during the last thirty years the railroads of Wisconsin have not been subjected to any rate-making power exercised by the State, and that the prosperity of the State has been dependent very largely upon the facilities for transportation afforded by railroads, the question as to whether Wisconsin has or has not prospered under existing conditions of railroad management is one which is clearly indicated by data supplied by the National Government. For the purpose of illustration I have compiled the following statements showing the actual progress made by Wisconsin during the period from 1880 to 1900, and the relative progress of Wisconsin as compared with the progress of the entire United States during the same period. The data selected for this purpose relate to Population, Wealth, Value of all Farm Property, Value of the Products of Agriculture, Capital Employed in Manufactures, Value of the Products of Manufacture, Value of the Products of Mining, Railroad Mileage and Average Rates

Charged for Transportation Services. The results of these comparisons are as follows:

POPULATION.

	1880.	1900.	Increase, per cent.
The United States.....	\$50,155,783	\$75,994,575	51
Wisconsin.....	1,315,497	2,069,042	57

WEALTH.

	1880.	1900.	Increase, per cent.
The United States.....	\$43,642,000,000	\$94,300,000,000	116
Wisconsin.....	1,139,000,000	2,700,000,000	137

VALUE OF ALL FARM PROPERTY.

	1880.	1900.	Increase, per cent.
The United States.....	\$12,180,501,538	\$20,514,001,838	68
Wisconsin.....	419,865,345	811,712,319	94

VALUE OF THE PRODUCTS OF AGRICULTURE.

	1880.	1900.	Increase, per cent.
The United States.....	\$2,212,540,927	\$4,739,118,752	114
Wisconsin.....	78,027,032	157,445,713	102

CAPITAL EMPLOYED IN MANUFACTURES.

	1880.	1900.	Increase, per cent.
The United States.....	\$2,790,272,000	\$9,846,628,564	253
Wisconsin.....	73,821,802	330,568,779	348

VALUE OF THE PRODUCTS OF MANUFACTURE.

	1880.	1900.	Increase, per cent.
The United States.....	\$5,369,579,191	\$13,010,036,514	142
Wisconsin.....	128,255,480	360,818,942	181

VALUE OF MINERAL PRODUCT (NON-PRECIOUS).

	1880.	1902.	Increase, per cent.
The United States.....	\$177,839,878	\$714,344,365	300
Wisconsin.....	317,636	4,427,813	1,300

RAILROAD MILEAGE.

	1880.	1900.	Increase, per cent.
	Miles.	Miles.	
The United States.....	92,147	207,977	125
Wisconsin.....	3,155	6,976	121

AVERAGE FREIGHT CHARGES PER TON PER MILE.

Railroads of	1882.	1903.	Reduction, per cent.
	Cents.	Cents.	
The United States.....	1.24	.78	35
*Wisconsin.....	1.51	.87	42

* The figures here given are for the Chicago and Northwestern, the Chicago, Burlington and Quincy, and the Chicago, Milwaukee and St. Paul Railroad Companies. The figures are for 1880 and 1903.

I believe, sir, that if you were to assemble the students of the University of Wisconsin in front of the Capitol of your State and read to them these wonderful and most gratifying evidences of the absolute progress of your glorious State and of the greater relative progress of Wisconsin, as compared with the progress of the entire United States

and then propound to them the question—What's the matter with Wisconsin? you would be answered with one resounding shout—"She's all right!" Furthermore, I believe that their loyalty to facts and to the logic of facts inculcated in them by their learned preceptors would be so strong that they could not possibly be allured by the persuasive eloquence of the most rampant advocate of populistic principles in your State or elsewhere, from the conviction that Wisconsin is in the full enjoyment of a high degree of prosperity.

There is one item near the end of the foregoing series of tabulated statements which does not exhibit for Wisconsin a greater increase than that of the United States and that is *railroad mileage*. This increase for Wisconsin is 121 per cent as against 125 for the United States—during the period from 1880 to 1900. I am fully convinced as to the cause of this relatively smaller increase for Wisconsin from my careful study of commercial, financial and political conditions during the last forty years. In States where the threat of governmental rate-making has been made, and where State rate-making has actually been exercised through a political agency of the State, the effect has been depressing to the financial interests of the railroads and consequently to the extension of railroad lines. I am forced to the belief, therefore, from my general observations as officer of the Government and in the practice of my profession as economist, that the political efforts of those gentlemen who advocate the policy of placing the financial control of the railroads of your State in the hands of a State commission, clothed with autocratic powers, has been detrimental to Wisconsin and that you would have to-day more

miles of railroad, better railroad facilities and brighter prospects for the future than now confront your people with the threat of governmental rate-making hanging over the railroad companies.

Railroad freight charges in Wisconsin during the last forty years have indicated a steady and continuous reduction—in this particular presenting no exception to the gratifying reduction in rates throughout the country. The average rate per ton per mile for transportation on the railroads of the United States fell from 1.24 cents in 1882 to .78 cents in 1903, which meant a saving of nearly \$788,000,000 annually to the country in freight charges on the basis of the traffic of 1903.

There are no available data indicating the average freight charges in particular States, but only for groups of States and particular trunk lines extending into and through several States. The three principal trunk roads whose lines extend through Wisconsin are the Chicago and Northwestern, the Chicago, Burlington and Quincy, and the Chicago, Milwaukee and St. Paul. The comparative reduction in the average freight rate for the railroads of the entire United States and for the three great trunk roads of Wisconsin from the year 1882 to the year 1903, the earliest and latest years of available statistics, is exhibited as follows:

AVERAGE FREIGHT CHARGES PER TON PER MILE.

Railroads of	1882.	1903.	Reduction, per cent.
	Cents.	Cents.	
The United States.....	1.24	.78	35
Wisconsin.....	1.51	.87	42

This indicates that the average reduction of rates on the principal Wisconsin railroads has been greater than the average reduction on all the railroads of the United States. There is an infirmity in this statement which I will mention. The three great trunk lines of Wisconsin—Chicago and Northwestern; Chicago, Burlington and Quincy, and Chicago, Milwaukee and St. Paul—extend into and through several States. The average rates stated are for the entire systems. I presume that the reduction of rates in Wisconsin has been about the same as for the whole, but that is a matter which can most conveniently be ascertained from the principal officers of the three trunk lines mentioned.

I repeat here a statement before made as to the railroads of the United States, namely, that the evils complained of as to the relative rates, preferential rates and other causes of complaint in Wisconsin are, comparatively speaking, but as the frictional resistances and incidental evils of the grandest and most beneficent system of transportation that the world ever saw. Furthermore, I maintain that all such causes of complaint can and should be removed by expedients compatible with the principles of right and justice on which the governmental institutions of this country are founded.

In view of the foregoing statements of fact as to the experiences of Wisconsin I am forced to the conclusion that those persons who are trying to inculcate the idea that Wisconsin is suffering, and that her tribulations are mainly due to railroad extortions and unjust discriminations, are imitators of the once famous Mrs. Lease, who by her persuasive eloquence in inculcating the doctrine of unrest and discontent contributed so powerfully toward the upbuilding to the Populist Party in the State of Kansas.

A REVOLUTIONARY PROPOSITION.

I turn to a sombre view of the general railroad situation in Wisconsin and in the United States.

In the face of the grand results which have been realized throughout this country from the regulation of our vast railroad system, through self-government and the free interaction of commercial forces, supplemented by wise and beneficent statutory enactments, the question now confronts the Congress of the United States and the Legislatures of the several States as to whether questions of right and of justice arising in the conduct of railroad transportation in this country shall continue to be determined by the judicial power of Government, which from the beginning has safeguarded the rights and liberties of the people, or be remitted to the absolute control of administrative bureaus, mere agencies of the executive power of Government. This latter mode of exercising governmental authority in all ages has proved to be a despotic manifestation of power repressive of the liberties and of the material interests of the people. This has been and is still known the world over as bureaucracy—a hated form of tyranny. It seems proper, therefore, in this connection, briefly to consider the bureaucratic mode of government in its historic aspects.

During the last two thousand years there has been going on among the foremost nations of the globe a political struggle between the advocates of dispensing justice in the conduct of the interaction of commercial and industrial forces through the judicial power and the advocates of the accomplishment of that purpose through the exercise of the executive power of government, the latter mode being usually exercised by a bureau clothed with autocratic power

or with delegated legislative authority. This autocratic governmental method—bureaucracy—was the potential cause of the downfall of the Roman Empire. It was also the chief cause of the French Revolution of 1795. The only civilized nation in which it now prevails as an unrestrained expression of governmental authority is Russia, where the people are to-day clamoring for its suppression, for the reason that it constitutes an intolerable form of despotism. In the public discussion of the present political troubles in Russia the vital question at issue is referred to as the “bureaucracy” and as the “autocracy.” The two terms are practically synonymous.

The framers of the Constitution were greatly influenced in their opposition to any sort of bureaucratic governmental power by the utterances of Montesquieu in “*Esprit des Lois*,” which Mr. Justice Holmes has characterized as “an epoch-making book.” Therein the vital importance of an independent judiciary was clearly explained. This view was highly commended by Madison, by Hamilton and by Judge Story, all of whom adopted the opinion of Montesquieu that “there is no liberty if the power of judging be not separated from the legislative and executive powers.” By fully adopting this view the United States became the only nation on the globe in which the “judicial power” is an independent co-ordinate branch of the government. By way of illustration Montesquieu pointed to the fact that certain monarchical countries of Europe, which respected the independent judicial authority, were conservators of personal liberty, whereas the republics of Italy, which governed through a body of magistrates, unrestrained by an independent judiciary, were cruel despotisms.

In England the exercise of the power of controlling the course of the development of the commercial and industrial interests of the country by autocratic governmental authority was known as a "dispensing power." This form of despotism was abolished as the result of the British Revolution of 1688. The men who framed our present form of government repudiated any such exercise of governmental authority. But, ever and anon, men oblivious to the lessons of the political experiences of nations during the last two thousand years, announce in this and in other countries some new scheme for placing the commercial and industrial interests of the people under some form of bureaucratic control. This abominable political heresy finds expression in the present attempt to confer upon the Interstate Commerce Commission autocratic powers. In Wisconsin it is expressed in the proposition to confer the power of determining absolute rates and relative rates to and from different points in the State upon a Commission endowed with practically autocratic powers and subject at all times to the vacillations of political sentiment and not to the dictates of established principles of justice as determined by the common experiences of more advanced nations and formulated in fundamental rules of judicial procedure expressive of the conscience and the enlightened judgment of mankind.

Men who are now advocating the adoption of the bureaucratic method of government for the cure of discriminations, rebates, and other evils which arise in the conduct of railroad transportation, delude themselves and attempt to delude others by the shallow sophistry that "new conditions demand new remedies." The correctness of this assumed adage may be admitted, but it is most strenuously objected

that such admission does not justify the adoption of a remedy which belongs to the dead past, which has left in its wake ruined empires and kingdoms, and which the English-speaking people of the world have scorned and repudiated for more than two hundred years. Such is bureaucracy! The attempt to establish bureaucratic control of the commercial and transportation interests of this great and prosperous country is one of its most flagrant expressions.

For ages great instrumentalities have been employed for the accomplishment of great commercial ends, and great demagogues have been fighting the great instrumentalities for the accomplishment of great political ends. But the general public interests have survived both the great instrumentalities and the great demagogues, illustrating the conservatism which inheres in the untrammelled interaction of forces. Besides the majesty of the law as judicially administered is superior to the devices of the demagogue and the designs of those who manage the instrumentalities.

STATE RAILROAD COMMISSIONS.

It was about the year 1870 when the public discussion of the question began in this country as to whether the railroads of the several States should be regulated by means of the immediate legislative determination of rates, classifications and other administrative usages, or whether that power should be delegated to State commissions. No steps had then been taken for the regulation of the railroads of the country by means of a National Railroad Commission. From the year 1875 until the year 1885 I was engaged as an officer of the National Government in investigating and

reporting upon the subject of railroad transportation. During that period, in my official capacity, I visited and conferred freely with the various State Railroad Commissions. Among others I visited the Railroad Commission of Wisconsin in the year 1876. The people of that State were then just recovering from the disastrous effects of the "Potter law," a statute which embraced the direct legislative determination of maximum rates and the prohibition of discriminations, some of which were unjust while others were the evident result of controlling conditions and as such legitimate expressions of commercial liberty. The results of my conference with the State commissioners at Madison are recorded on pages 180 and 181 of my annual report on Internal Commerce for the year 1877. The following extract from that report is so entirely in accord with my present views that I present it as follows:

"The various inconsistencies of the law are set forth by the commissioners, and they are also presented in several documents submitted to the Wisconsin Legislature by the Chicago and Northwestern Railroad and the Chicago, Milwaukee and St. Paul Railroad Companies. The commissioners themselves, after a very thorough investigation of the whole question of the governmental regulation of railroads, have reached the conclusion that the regulation of fares and freights by the State should be regarded as an expedient for the correction of abuses than as a permanent substitute for the management of railroads by officers in the employ of the railroad corporations. This view is clearly set forth in the following extract from the report of the commissioners for 1874:

"Surely there is no apology for the exercise on the part of the State, of any power over corporations which can be safely and as wisely exercised by the corporations themselves. There is no principle of American government so thoroughly or so properly established

as that which limits the province of legislation, at all times and under all circumstances, to enactments for the general good, and which denies to Government the right or the duty of unnecessary interference with private or public enterprise."

The Wisconsin Commission did not then, nor did I then, or do I now contemplate the idea of allowing any unjust discrimination in rates or any unjust practice on the part of any railroad company to continue, when proved to be unjust upon judicial determination under the provisions of law adapted to governing conditions and to the circumstances and conditions involved in each case. This is the high ideal of the men who framed the Constitution of the United States. It has met all the needs of this country for over a hundred years with abundant fruits of liberty and of prosperity. And I am confident that it is an ideal which will not be superseded by any ideal of populism with all the certain evils of despotic rule which have characterized bureaucracy for more than two thousand years.

I agree that the laws of the United States and of the several States are not yet perfectly adapted to the determination of questions of right and of justice as between the railroad carrier and the shipper, but I am confident that much greater progress would have been made in that direction if legislators and political leaders had expended half as much time and effort in devising ways and means for extending and adapting the provisions of the common law to present causes of complaint as they have expended in devising schemes for instituting autocratic rule in conflict with the principles of justice and liberty upon which our governmental institutions are founded. This is evident from the results of Congressional action. The Act to Regulate Com-

merce is entirely in harmony with the idea of administering justice according to the principles of the common law as developed. The admirable and beneficent results of the administration of the Act to Regulate Commerce have been hereinbefore fully described. Summarily stated, the Interstate Commerce Commission, during the eighteen years of its existence, has been able to prove in the Federal Courts not a single case of exorbitant rates; only one case of unjust discrimination during each two and a half years, and it has settled informally ninety-two per cent of all the complaints submitted to it. Such experiences expose the utter absurdity of recourse to despotic or drastic methods of regulation antagonistic to cherished American ideas of right and justice. The Elkins Act of February 4, 1903, which is similar in character to the Act just mentioned, has also been entirely effective in the suppression of rebates. Progress on the same line is possible and will probably be realized and acquire the force of statute law. I do not feel called upon at the present time to suggest legislation in the direction indicated, for the reason that the subject is now in competent hands.

As the results of my observations and information from various sources in regard to State railroad commissions endowed with autocratic power of fixing rates and charges for railroad transportation services, I am led to the belief that such State Commissions, as a rule, have been detrimental to the public interests. They have generally reduced the revenues of the railroad companies to an extent which has operated to prevent the extension of existing lines and the construction of new lines, and have prevented improvements calculated to facilitate and enlarge traffic.

This has reacted unfavorably upon the productive enterprise and commerce of the respective States which have had recourse to that method of regulation.

The political results of such drastic legislation have been deplorable. We have beheld the spectacle of candidates for office, from governor to commissioner, bidding for preferment before nominating conventions and at the polls through the expressed or implied promise to reduce railroad rates. Besides in the discharge of their duties railroad State commissioners have too often been guided by the exigencies of their official tenure of office than by the economic or equitable considerations upon which alone rate-making should be based. There are notable and most cheering exceptions to this rule, particularly with respect to the non-rate-fixing commissions. I believe that, generally speaking, the determination by State railroad commissions of the rates to be charged for transportation services has been a travesty upon the dispensation of justice and a glaring source of political corruption.

CONCLUSION.

In this statement I have not attempted to discuss the merits of the particular subject of regulating rates in Wisconsin. You did not, in your letter, indicate any desire that I should do so. You simply asked my "views upon the question of State regulation of railways" by which I understand that you desire the result of my investigations and conclusion upon the subject as the result of my inquiries in that direction during the last forty years. I have received from no source any recent statement as to absolute or relative rates, discriminations or other causes of com-

plaint in Wisconsin, nor have I been able to devote studious attention to any arguments as pro or con in regard to the present struggle over the subject of railroad regulation in your State. That would have required months of my time and effort. My expressed views are therefore absolutely impartial as to the merits of the particular subject of debate in Wisconsin.

I submit to you this somewhat hurriedly prepared statement in the sincere hope that it may in some degree aid you in the discharge of the important legislative duty which now presses upon you.

I am, sir,

Very respectfully yours,

JOSEPH NIMMO, JR.





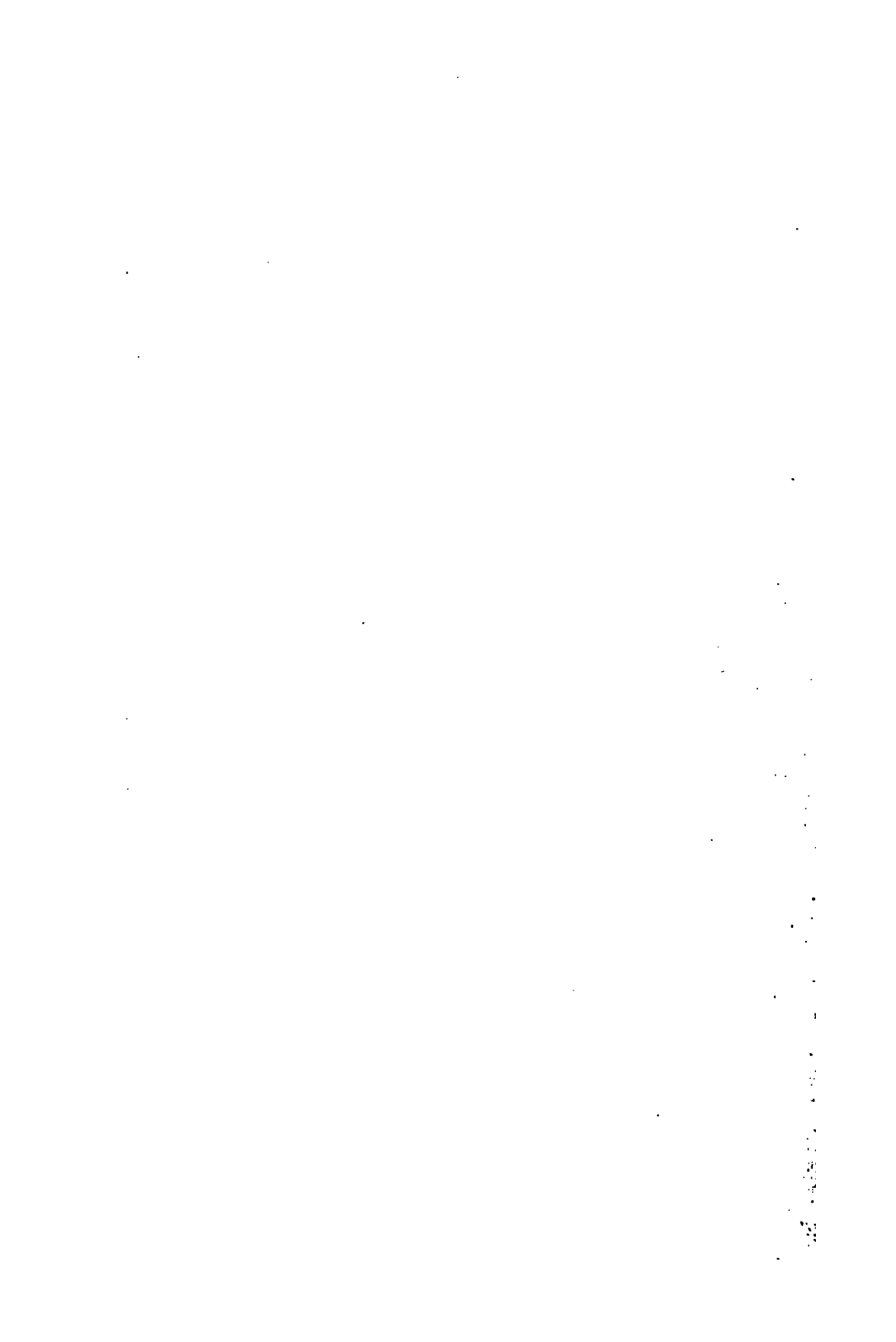
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